



City of Kenmore - 18120 68th Avenue NE - P.O. Box 82607 - Kenmore, WA 98028
Phone: 425-398-8900 - Fax: 425-481-3236 - E-mail: cityhall@kenmorewa.gov

City of Kenmore
REVISED City Council Special Meeting Agenda

5:30 p.m., Monday, June 29, 2015

Kenmore City Hall, Council Chambers
18120 68th Ave. NE, Kenmore, WA 98028

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call the City Clerk at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Council agendas are also available on our website at www.kenmorewa.gov.

I. 5:30 p.m. - CALL SPECIAL MEETING TO ORDER

II. PUBLIC HEARING

- A. Public Hearing to Receive Public Testimony on Ordinance No. 15-0400, Approving a Development Agreement with Bastyr University (Contract No. 15-C1446) - Debbie Bent, Community Development Director
[Agenda Bill & Attachments](#)

III. BUSINESS AGENDA

- A. Adopt Ordinance No. 15-0400, Approving a Development Agreement with Bastyr University (Contract No. 15-C1446) - Debbie Bent, Community Development Director
[Agenda Bill & Attachments](#)
- B. Adopt Resolution No. 15-254, Approving Amendment No. 1 to Bastyr Ball Field Lease Agreement (Contract No. 09-C824) - Debbie Bent, Community Development Director
[Agenda Bill & Attachments](#)
- C. Adopt Resolution No. 15-262, Authorizing Grant Funding Application to the Recreation and Conservation Office Youth Athletic Facilities Program - Debbie Bent, Community Development Coordinator
[Agenda Bill & Attachment](#)

IV. STAFF REPORT

V. COUNCILMEMBER REPORTS & COMMENTS

VI. ADJOURNMENT

Upcoming Meetings:

Tues., July 7, 2015 7:00 p.m. Planning Commission Regular Meeting
Mon., July 13, 2015 6:30 p.m. City Council Special & Regular Meeting
Mon., July 20, 2015 7:00 p.m. City Council Regular Meeting

Subject/Topic: Ordinance No. 15-0400 authorizing execution of a development agreement (Contract 15-C1446) with Bastyr University extending the term of the campus master plan for five years. Proposed Council Action/Motion: Motion to approve Ordinance No. 15-0400.	For Council Meeting Agenda of: 06/29/15 Department: <u>City Manager</u> Prepared by: Debbie Bent, Community Development Director Approved by Department Head: _____ Approved by City Attorney: _____ Approved by Finance Director: <u>June 6/19/15</u> Approved by City Manager: _____ Exhibits/Attachments: 1. Ordinance 15-0400 2. Contract 15-C1446 3. Copy of the City Manager's recommendation dated 6/17/15.
Expenditure Required \$ See Amount Budgeted: N/A Appropriation Required \$0 fiscal note below.	
<u>INFORMATION/BACKGROUND:</u> A public hearing is scheduled at the 6/29/15 Council meeting to receive public comment on the proposed development agreement with Bastyr University. Following the public hearing, staff recommends that Council passes a motion approving Ordinance No. 15-0400 (see Attachment #1) that authorizes execution of the development agreement Contract 15-C1446 (see Attachment #2) to amend the Bastyr University Master Plan to extend the term of the plan for five years. Approval of a development agreement requires a Council super majority (5 votes). At the 6/15/15 Council meeting, Council passed a motion approving further review of a Development Agreement with Bastyr University. The development agreement process requires a Public Hearing, which is scheduled for 6/29/15. Notice of the public hearing was also provided in accordance with the development agreement process. A legal notice for the hearing was published in the Seattle Times on 6/19/15, a sign board was posted on the Bastyr property on 6/19/15 and notices regarding the hearing were mailed on 6/18/15 to surrounding property owners. The City Manager's recommendation (see Attachment #3) to approve the development agreement was also available 6/19/15 at City Hall and on the City's website. By Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan. The Master Plan is effective until December 31, 2020. The Kenmore Municipal Code 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.	
<u>FISCAL CONSIDERATION:</u> \$200 threshold review fee, \$5000 development agreement review fee and attorney review fees. The City waived these fees as part of consideration in the development agreement.	
<u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Council goal: To continue to implement the Economic Development Plan, including support existing businesses. Vision Statement: Support and encourage education and quality schools; and supports recreation and health through well-maintained parks, trails, and open spaces	

Attachment 1

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 15-0400**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON, AMENDING THE BASTYR UNIVERSITY
MASTER PLAN TO EXTEND THE TERM OF THE PLAN
FOR FIVE YEARS, APPROVING A DEVELOPMENT
AGREEMENT WITH BASTYR UNIVERSITY, AND
AMENDING SECTION 1 OF ORDINANCE NO. 09-0304.**

WHEREAS, by Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan ("Master Plan") for a ten-year period, through December 31, 2020; and

WHEREAS, the Master Plan guides development improvements and implementation phasing over a period of years on the Bastyr University campus; and

WHEREAS, the City Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in Public and Semi-Public zone; and

WHEREAS, the Master Plan is effective until December 31, 2020; and

WHEREAS, the City and Bastyr desire to modify the Master Plan by extending its term for five years, from December 31, 2020 to December 31, 2025; and

WHEREAS, KMC 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review; and

WHEREAS, extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan; and

WHEREAS, KMC Chapter 18.110 authorizes the City to enter into a development agreement with Bastyr University in accordance with the provisions and procedures of that Chapter; and

WHEREAS, the City and Bastyr desire to enter into a development agreement to extend the term of the Master Plan for five years to December 31, 2025;

WHEREAS, the proposed Development Agreement is consistent with the applicable policies and goals of the City's Comprehensive Plan and the applicable development regulations; and

WHEREAS, the proposed Development Agreement is binding on the parties and their successors; and

WHEREAS, the City Attorney has reviewed and approved the proposed Development Agreement as to form; and

WHEREAS, as required by KMC 18.110.050, and pursuant to notice published in the Seattle Times on June 19, 2015, the City Council held a public hearing on June 29, 2015 regarding the proposed Development Agreement; and

WHEREAS, Bastyr University signed the Development Agreement before the public hearing; and

WHEREAS, the proposed Development Agreement is consistent with the provisions of KMC Chapter 18.110; and

WHEREAS, having considered the testimony and comments made at the public hearing, having considered the documents introduced at the hearing, and having reviewed the proposed Development Agreement, the City Council determines that the proposed Development Agreement is in the best interests of the City and its residents as a whole and should be approved;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Recitals. The Recitals of this Ordinance are adopted as City Council findings of fact.

Section 2. Amendment of Master Plan. The Bastyr University Master Plan, adopted by Ordinance No. 09-0304 (“Master Plan”), is amended to extend its expiration date from December 31, 2020 to December 31, 2025. Consistent with the extension of the term of the Master Plan to December 31, 2025, all references to the year “2020” in the Master Plan are changed to the year “2025.” Except as amended in this Section 2, the Master Plan shall remain in effect.

Section 3. Approval of Development Agreement. The City Council, by a vote of at least a majority plus one of the whole City Council, approves the “City of Kenmore and Bastyr University, Development Agreement to Extend the Bastyr University Master Plan,” Attachment A to this Ordinance (“Development Agreement”).

Section 4. Execution of Development Agreement. The City Manager is authorized and directed to execute the Development Agreement on behalf of the City.

Section 5. Amendment of Ordinance No. 09-0304. Section 1 of Ordinance No. 09-0304, which adopts the Master Plan, is amended in accordance with the amendments to the Master Plan stated in Section 2 of this Ordinance. In the event of any conflict between this

Ordinance (including the Development Agreement approved by this Ordinance) and Ordinance No. 09-0304, this Ordinance shall control.

Section 6. Ratification and Confirmation. Any acts made consistent with the authority and prior to the effective date of this Ordinance are ratified and confirmed.

Section 7. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 29TH DAY OF JUNE, 2015.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Patty Safrin, City Clerk

Approved as to form:

Rod P. Kaseguma, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No.:

Date of Publication:

Effective Date:

ATTACHMENT A

(The City of Kenmore and Bastyr University Development Agreement to Extend the Bastyr University Master Plan)

Attachment 2

CITY OF KENMORE CONTRACT NO. 15-C1446

**THE CITY OF KENMORE AND BASTYR UNIVERSITY
DEVELOPMENT AGREEMENT
EXTENDING THE BASTYR UNIVERSITY MASTER PLAN**

1. AGREEMENT. THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered by and between the CITY OF KENMORE, a Washington municipal corporation (“City”) and BASTYR UNIVERSITY, a Washington non-profit corporation (“Bastyr”). City and Bastyr are each a “Party” and collectively the “Parties” to this Agreement. The Parties agree as follows.

2. RECITALS.

2.1 The City approved the Bastyr University Master Plan (“Master Plan”) by Ordinance No. 09-0304 (December 14, 2009). The City’s Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in Public and Semi-Public zone.

2.2 The Master Plan is currently effective until December 31, 2020. By this Agreement, the City and Bastyr modify the Master Plan to extend its term for five years, from December 31, 2020 to December 31, 2025.

2.3 Kenmore Municipal Code (“KMC”) 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.

2.4 KMC Chapter 18.110 authorizes the City to enter into a development agreement with persons who have control of real property in accordance with the provisions and procedures of that Chapter. The City and Bastyr desire to enter into this Agreement, which is a development agreement, to extend the term of the Master Plan for five years to December 31, 2025.

3. AMENDMENT OF MASTER PLAN. As approved by the City Council pursuant to KMC Chapter 18.110, the Bastyr University Master Plan, adopted by City Ordinance No. 09-0304 and incorporated herein by this reference (“Master Plan”), is amended to extend its expiration date from December 31, 2020 to December 31, 2025. Consistent with the extension of the term of the Master Plan to December 31, 2025, all references to the year “2020” in the Master Plan are changed to the year “2025.” Except as amended above, the Master Plan remains in effect.

4. **REAL PROPERTY.** The real property covered by the Master Plan is approximately 50 acres of real property located at 14500 Juanita Drive NE, Kenmore, Washington, which real property is described and depicted in the Master Plan ("**Bastyr Property**"). The legal description of the Bastyr Property is set forth on **Exhibit A**, attached hereto and incorporated herein. The Bastyr Property is located in the Public and Semi-Public zone.
5. **KMC CHAPTER 18.110.** This Agreement incorporates by reference the provisions of the Master Plan, and all applicable City ordinances and regulations described in the "Vesting" section of the Master Plan, which constitute the terms and conditions of KMC 18.110.020(F). The Parties agree that KMC Chapter 18.110, relating to Development Agreements, is applicable to this Agreement.
6. **TERM AND EFFECTIVE DATE.** This Agreement shall commence on the last date that it is signed by both parties, and, subject to Section 5 hereof, shall continue in force until the expiration of the Master Plan on December 31, 2025.
7. **EARLY TERMINATION.** This Agreement shall expire and be of no further force and effect if the Master Plan is terminated or substantially changed, unless agreed otherwise by the Parties.
8. **SUCCESSOR AND ASSIGNS.** All of the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the Parties.
9. **NO THIRD PARTY RIGHTS.** This Agreement is solely for the benefit of the Parties and gives no right to any other party or person.
10. **NO JOINT VENTURE.** No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.
11. **JURISDICTION AND VENUE.** This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
12. **SEVERABILITY.** If any section or part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.
13. **ENFORCEMENT; NO WAIVER; PREVAILING PARTY COSTS.** In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provision of this Agreement against the other Party, all such fees, costs and expenses shall be

recoverable by the prevailing Party. The failure of a Party to exercise any right or enforce any provision of this Agreement shall not be considered a waiver of such right or enforcement remedy.

14. COUNTERPARTS. This Agreement may be signed in counterparts, and if so signed, shall be deemed on integrated document.

15. RECORDING REQUIRED. This Agreement shall be recorded by the City at Bastyr's expense.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

BASTYR UNIVERSITY

By: _____
Name: _____
Its: _____
Date: _____

CITY OF KENMORE

By: _____
Name: _____
Its: City Manager
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Bastyr University, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Kenmore to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A
Legal Description of Bastyr University real property



City Of Kenmore, Washington

Memorandum

Date: June 17, 2015

To: Mayor and Councilmembers

From: Rob Karlinsey, City Manager

Subject: City Manager's Recommendation for the Development Agreement with Bastyr University

Recommendation: At the June 15th Council meeting, Council passed a motion approving further review of a Development Agreement with Bastyr University. The City Manager recommends that on June 29, 2015 the City Council approves the Development Agreement (Contract 15-C1446) with Bastyr University to amend the Master Plan, extending the term of the plan for five years. The development agreement process requires a Council super majority approval (five votes). Council approval of Ordinance No. 15-0400 approves the Development Agreement and directs the City Manager to execute the Agreement (Contract 15-C1446) on behalf of the City.

Background: By Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan. The Master Plan is effective until December 31, 2020. The City Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in the Public and Semi-Public zone. The Kenmore Municipal Code 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.

KMC Chapter 18.110 authorizes the City to enter into a development agreement with persons who have control of real property in accordance with the provisions and procedures of that Chapter. The City and Bastyr desire to enter into a development agreement, to extend the term of the Master Plan for five years to December 31, 2025. No other amendments to the Master Plan are proposed.

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Subject/Topic: Ordinance No. 15-0400 authorizing execution of a development agreement (Contract 15-C1446) with Bastyr University extending the term of the campus master plan for five years. Proposed Council Action/Motion: Motion to approve Ordinance No. 15-0400.	For Council Meeting Agenda of: 06/29/15 Department: <u>City Manager</u> Prepared by: Debbie Bent, Community Development Director Approved by Department Head: _____ Approved by City Attorney: _____ Approved by Finance Director: _____ Approved by City Manager: _____ Exhibits/Attachments: 1. Ordinance 15-0400 2. Contract 15-C1446 3. Copy of the City Manager's recommendation dated 6/17/15.
Expenditure Required \$ See Amount Budgeted: N/A Appropriation Required \$0 fiscal note below.	
<u>INFORMATION/BACKGROUND:</u> A public hearing is scheduled at the 6/29/15 Council meeting to receive public comment on the proposed development agreement with Bastyr University. Following the public hearing, staff recommends that Council passes a motion approving Ordinance No. 15-0400 (see Attachment #1) that authorizes execution of the development agreement Contract 15-C1446 (see Attachment #2) to amend the Bastyr University Master Plan to extend the term of the plan for five years. Approval of a development agreement requires a Council super majority (5 votes). At the 6/15/15 Council meeting, Council passed a motion approving further review of a Development Agreement with Bastyr University. The development agreement process requires a Public Hearing, which is scheduled for 6/29/15. Notice of the public hearing was also provided in accordance with the development agreement process. A legal notice for the hearing was published in the Seattle Times on 6/19/15, a sign board was posted on the Bastyr property on 6/19/15 and notices regarding the hearing were mailed on 6/18/15 to surrounding property owners. The City Manager's recommendation (see Attachment #3) to approve the development agreement was also available 6/19/15 at City Hall and on the City's website. By Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan. The Master Plan is effective until December 31, 2020. The Kenmore Municipal Code 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.	
<u>FISCAL CONSIDERATION:</u> \$200 threshold review fee, \$5000 development agreement review fee and attorney review fees. The City waived these fees as part of consideration in the development agreement.	
<u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Council goal: To continue to implement the Economic Development Plan, including support existing businesses. Vision Statement: Support and encourage education and quality schools; and supports recreation and health through well-maintained parks, trails, and open spaces	

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WASHINGTON
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MASTER PLAN TO EXTEND THE TERM OF THE PLAN
FOR FIVE YEARS, APPROVING A DEVELOPMENT
AGREEMENT WITH BASTYR UNIVERSITY, AND
AMENDING SECTION 1 OF ORDINANCE NO. 09-0304.**

WHEREAS, by Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan ("Master Plan") for a ten-year period, through December 31, 2020; and

WHEREAS, the Master Plan guides development improvements and implementation phasing over a period of years on the Bastyr University campus; and

WHEREAS, the City Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in Public and Semi-Public zone; and

WHEREAS, the Master Plan is effective until December 31, 2020; and

WHEREAS, the City and Bastyr desire to modify the Master Plan by extending its term for five years, from December 31, 2020 to December 31, 2025; and

WHEREAS, KMC 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review; and

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WHEREAS, the City and Bastyr desire to enter into a development agreement to extend the term of the Master Plan for five years to December 31, 2025;

WHEREAS, the proposed Development Agreement is consistent with the applicable policies and goals of the City's Comprehensive Plan and the applicable development regulations; and

WHEREAS, the proposed Development Agreement is binding on the parties and their successors; and

WHEREAS, the City Attorney has reviewed and approved the proposed Development Agreement as to form; and

WHEREAS, as required by KMC 18.110.050, and pursuant to notice published in the Seattle Times on June 19, 2015, the City Council held a public hearing on June 29, 2015 regarding the proposed Development Agreement; and

WHEREAS, Bastyr University signed the Development Agreement before the public hearing; and

WHEREAS, the proposed Development Agreement is consistent with the provisions of KMC Chapter 18.110; and

WHEREAS, having considered the testimony and comments made at the public hearing, having considered the documents introduced at the hearing, and having reviewed the proposed Development Agreement, the City Council determines that the proposed Development Agreement is in the best interests of the City and its residents as a whole and should be approved;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Recitals. The Recitals of this Ordinance are adopted as City Council findings of fact.

Section 2. Amendment of Master Plan. The Bastyr University Master Plan, adopted by Ordinance No. 09-0304 (“Master Plan”), is amended to extend its expiration date from December 31, 2020 to December 31, 2025. Consistent with the extension of the term of the Master Plan to December 31, 2025, all references to the year “2020” in the Master Plan are changed to the year “2025.” Except as amended in this Section 2, the Master Plan shall remain in effect.

Section 3. Approval of Development Agreement. The City Council, by a vote of at least a majority plus one of the whole City Council, approves the “City of Kenmore and Bastyr University, Development Agreement to Extend the Bastyr University Master Plan,” Attachment A to this Ordinance (“Development Agreement”).

Section 4. Execution of Development Agreement. The City Manager is authorized and directed to execute the Development Agreement on behalf of the City.

Section 5. Amendment of Ordinance No. 09-0304. Section 1 of Ordinance No. 09-0304, which adopts the Master Plan, is amended in accordance with the amendments to the Master Plan stated in Section 2 of this Ordinance. In the event of any conflict between this

Ordinance (including the Development Agreement approved by this Ordinance) and Ordinance No. 09-0304, this Ordinance shall control.

Section 6. Ratification and Confirmation. Any acts made consistent with the authority and prior to the effective date of this Ordinance are ratified and confirmed.

Section 7. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 29TH DAY OF JUNE, 2015.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Patty Safrin, City Clerk

Approved as to form:

Rod P. Kaseguma, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No.:

Date of Publication:

Effective Date:

ATTACHMENT A

(The City of Kenmore and Bastyr University Development Agreement to Extend the Bastyr University Master Plan)

Attachment 2

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DEVELOPMENT AGREEMENT
EXTENDING THE BASTYR UNIVERSITY MASTER PLAN**

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2. RECITALS.

2.1 The City approved the Bastyr University Master Plan (“Master Plan”) by Ordinance No. 09-0304 (December 14, 2009). The City’s Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in Public and Semi-Public zone.

2.2 The Master Plan is currently effective until December 31, 2020. By this Agreement, the City and Bastyr modify the Master Plan to extend its term for five years, from December 31, 2020 to December 31, 2025.

2.3 Kenmore Municipal Code (“KMC”) 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.

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3. AMENDMENT OF MASTER PLAN. As approved by the City Council pursuant to KMC Chapter 18.110, the Bastyr University Master Plan, adopted by City Ordinance No. 09-0304 and incorporated herein by this reference (“Master Plan”), is amended to extend its expiration date from December 31, 2020 to December 31, 2025. Consistent with the extension of the term of the Master Plan to December 31, 2025, all references to the year “2020” in the Master Plan are changed to the year “2025.” Except as amended above, the Master Plan remains in effect.

4. **REAL PROPERTY.** The real property covered by the Master Plan is approximately 50 acres of real property located at 14500 Juanita Drive NE, Kenmore, Washington, which real property is described and depicted in the Master Plan ("**Bastyr Property**"). The legal description of the Bastyr Property is set forth on **Exhibit A**, attached hereto and incorporated herein. The Bastyr Property is located in the Public and Semi-Public zone.
5. **KMC CHAPTER 18.110.** This Agreement incorporates by reference the provisions of the Master Plan, and all applicable City ordinances and regulations described in the "Vesting" section of the Master Plan, which constitute the terms and conditions of KMC 18.110.020(F). The Parties agree that KMC Chapter 18.110, relating to Development Agreements, is applicable to this Agreement.
6. **TERM AND EFFECTIVE DATE.** This Agreement shall commence on the last date that it is signed by both parties, and, subject to Section 5 hereof, shall continue in force until the expiration of the Master Plan on December 31, 2025.
7. **EARLY TERMINATION.** This Agreement shall expire and be of no further force and effect if the Master Plan is terminated or substantially changed, unless agreed otherwise by the Parties.
8. **SUCCESSOR AND ASSIGNS.** All of the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the Parties.
9. **NO THIRD PARTY RIGHTS.** This Agreement is solely for the benefit of the Parties and gives no right to any other party or person.
10. **NO JOINT VENTURE.** No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.
11. **JURISDICTION AND VENUE.** This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
12. **SEVERABILITY.** If any section or part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.
13. **ENFORCEMENT; NO WAIVER; PREVAILING PARTY COSTS.** In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provision of this Agreement against the other Party, all such fees, costs and expenses shall be

recoverable by the prevailing Party. The failure of a Party to exercise any right or enforce any provision of this Agreement shall not be considered a waiver of such right or enforcement remedy.

14. COUNTERPARTS. This Agreement may be signed in counterparts, and if so signed, shall be deemed on integrated document.

15. RECORDING REQUIRED. This Agreement shall be recorded by the City at Bastyr's expense.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

BASTYR UNIVERSITY

By: _____
Name: _____
Its: _____
Date: _____

CITY OF KENMORE

By: _____
Name: _____
Its: City Manager
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Bastyr University, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Kenmore to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A
Legal Description of Bastyr University real property



City Of Kenmore, Washington

Memorandum

Date: June 17, 2015

To: Mayor and Councilmembers

From: Rob Karlinsey, City Manager

Subject: City Manager's Recommendation for the Development Agreement with Bastyr University

Recommendation: At the June 15th Council meeting, Council passed a motion approving further review of a Development Agreement with Bastyr University. The City Manager recommends that on June 29, 2015 the City Council approves the Development Agreement (Contract 15-C1446) with Bastyr University to amend the Master Plan, extending the term of the plan for five years. The development agreement process requires a Council super majority approval (five votes). Council approval of Ordinance No. 15-0400 approves the Development Agreement and directs the City Manager to execute the Agreement (Contract 15-C1446) on behalf of the City.

Background: By Ordinance No. 09-0304, passed on December 14, 2009, the City Council approved the Bastyr University Master Plan. The Master Plan is effective until December 31, 2020. The City Comprehensive Plan states that the purpose of the Master Plan is to guide the development and activities of the Bastyr University property, which shall be limited to the activities and use levels in the Master Plan and in the Public and Semi-Public zone. The Kenmore Municipal Code 18.120.050 authorizes minor amendments to an approved master plan pursuant to a development agreement, where the amendments do not change the nature or level of use or do not require a new environmental review. The City has determined that extending the Master Plan for five years through December 31, 2025 is a minor amendment to the Master Plan.

KMC Chapter 18.110 authorizes the City to enter into a development agreement with persons who have control of real property in accordance with the provisions and procedures of that Chapter. The City and Bastyr desire to enter into a development agreement, to extend the term of the Master Plan for five years to December 31, 2025. No other amendments to the Master Plan are proposed.

18120 68th Ave NE · PO Box 82607 · Kenmore, WA 98028

Office: (425) 398-8900 · Fax: (425) 481-3236 · cityhall@kenmorewa.gov · www.kenmorewa.gov



**City Council Business Agenda Item
City of Kenmore, WA**

Subject/Topic: Resolution No. 15-254 authorizing execution of amendment #1 to the lease agreement (Contract 09-C824) with Bastyr University for active recreation facilities Proposed Council Action/Motion: Motion to approve Resolution No 15-254	For Council Meeting Agenda of: 06/29/15 Department: <u>City Manager</u> Prepared by: Debbie Bent, Community Development Director Approved by Department Head: _____ Approved by City Attorney: _____ Approved by Finance Director: _____ Approved by City Manager: _____ Initials & Date: <u> </u> Exhibits/Attachments: 1. Resolution No. 15-254 2. Amendment #1 to Contract 09-C824 3. Contract 09-C824
Expenditure Required: \$0 Amount Budgeted: \$50,000 Appropriation Required \$0	
<u>INFORMATION/BACKGROUND:</u> Staff recommends that Council approve Resolution No. 15-254 (see Attachment #1) that would authorize execution of Amendment #1 to the lease agreement with Bastyr University for active recreation facilities (see Attachment #2). The City and Bastyr University executed a ten year lease agreement December 2009 (See attachment #3) outlining terms for joint use of the athletic fields on the Bastyr campus. The lease agreement expires December 31, 2020 unless extended. Amendment #1 amends two sections of the lease agreement: In Section 2 the lease term is extended five years through December 2025; and in Section 6 Bastyr only has to remit 50% of the user fee revenues to the City if the user fees exceed maintenance costs. The City's annual \$50,000 lease payment to Bastyr does not change.	
<u>FISCAL CONSIDERATION:</u> The \$50,000 annual lease payment is accounted for in the City's adopted biennial 2015-2016 budget.	
<u>COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED:</u> Vision Statement: Supports recreation and health through well-maintained parks, trails, and open spaces. Park, Recreation and Open Space (PROS) Plan: Goal P-5 Support and leverage opportunities for providing a diverse range of quality, accessible and affordable recreation programs and activities to Kenmore residents of all ages and Objective P-5.1 encourage Kenmore residents to utilize existing, public, non-profit and private recreational programs and resources and support the efforts of organizations that provide additional opportunities.	

I:/City Clerk/Agenda Items/Templates

Attachment 1

**CITY OF KENMORE
WASHINGTON**

RESOLUTION NO. 15-254

**A RESOLUTION OF THE CITY OF KENMORE,
WASHINGTON, APPROVING THE FIRST AMENDMENT
TO THE LEASE AGREEMENT, BASTYR UNIVERSITY
ACTIVE RECREATION FACILITIES.**

WHEREAS, in December 2009, the City of Kenmore and Bastyr University entered into the "Lease Agreement, Bastyr University Active Recreation Facilities" ("Lease") for the joint and cooperative use of certain athletic fields and track on the Bastyr University campus; and

WHEREAS, the City of Kenmore and Bastyr University desire to extend the Lease for a period of five (5) years and to modify the terms for payment of fees by Bastyr to the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DOES RESOLVE that the City Manager is authorized to execute the "First Amendment to Lease Agreement, Bastyr University Active Recreation Facilities," Attachment A to this Resolution.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON,
AT A REGULAR MEETING THEREOF THIS 29th DAY OF JUNE 2015.

CITY OF KENMORE

Mayor David Baker

ATTEST/AUTHENTICATED:

Patty Safrin, City Clerk

Approved as to form:

Rod Kaseguma, City Attorney

Attachment 2

**CITY OF KENMORE CONTRACT NO. 09-C824 Amendment No. 1
FIRST AMENDMENT TO
LEASE AGREEMENT, BASTYR UNIVERSITY ACTIVE RECREATION
FACILITIES**

THIS FIRST AMENDMENT to LEASE AGREEMENT, BASTYR UNIVERSITY ACTIVE RECREATION FACILITIES is entered into as of the 1st day of July, 2015, by and between BASTYR UNIVERSITY, a Washington nonprofit corporation ("Bastyr") and the CITY OF KENMORE, Washington, a Washington municipal corporation ("City").

RECITALS

A. In December 2009, Bastyr and the City entered into the "Lease Agreement, Bastyr University Active Recreation Facilities" ("Lease") for the joint and cooperative use of certain athletic fields and a track on the Bastyr campus.

B. Bastyr and the City desire to extend the Lease for a period of five (5) years and modify the terms for payment of fees by Bastyr to the City.

AMENDMENT

1. Section 2 of the Lease is amended as follows:

2. **TERM:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Facilities, subject to the terms and conditions set forth in this Lease. This Lease shall commence as of January 1, 2010 (the "Commencement Date") and, unless earlier terminated in accordance with the provisions set forth in Sections 7 and 13 below, shall continue for a period of ~~eleven~~sixteen ~~(11)~~(16) years thereafter and terminate on December 31, ~~2020~~2025 (the "Term").

2.1 If Tenant desires to extend the Term for a period of five (5) years, it shall give Landlord written notice on or before September 1, ~~2019~~2024 of its request to extend the Term (the "Extension Request"). Landlord shall have a period of thirty (30) days following its receipt of the Extension Request in which to determine whether Landlord agrees to grant such extension. Landlord's determination to grant such extension shall be in Landlord's sole and absolute discretion and shall be given in writing. In the event Landlord fails to respond to the Extension Request within such 30-day period, then the Extension Request shall be deemed to be denied. If Landlord agrees to grant the Extension Request, then such extension of this Lease shall be on the same terms, covenants and conditions as provided for in this Lease with the exception of Rent, which Rent amount shall be determined pursuant to Section 2.2 below,

provided, however, the annual Rent amount during the extended Term shall not be less than the annual Rent amount payable during calendar year ~~2020~~2025.

2.2 If Landlord grants the Extension Request, Landlord shall provide Tenant with Landlord's determination of the fair market Rent for the extended Term, including periodic increases as dictated by the current market, in Landlord's written approval of the Extension Request ("Landlord's Determination of Rent for Extended Term"). Tenant shall provide notice to Landlord within thirty (30) days after receipt of such notice from Landlord as to whether Tenant accepts Landlord's Determination of Rent for Extended Term. In the event Tenant does not agree to Landlord's Determination of Rent for Extended Term, Landlord and Tenant shall attempt to agree upon Rent for the Facilities for the extended Term. If the parties are unable to agree upon the Rent for the extended Term by January 1, ~~2020~~2025, then either party shall have the right to revoke the Extension Request or approval thereof, as applicable, and the Lease shall terminate on the original termination date provided for in Section 2 above.

2. Section 6 of the Lease is amended as follows:

6. **SCHEDULED USES PROCEEDS.** Landlord shall keep an accounting of all fees collected by it in connection with the Tenant Scheduled Uses. For calendar years 2011 through ~~2020~~2025, inclusive;

6.1 If Landlord's maintenance and operation costs of the Facilities due to Tenant Scheduled Uses is less than the fees paid for use of the Facilities during Tenant Scheduled Uses, Landlord shall remit on a quarterly basis to Tenant a payment (the "Proceeds Payment") in an amount equal to fifty percent (50%) of the difference between the maintenance and operation costs and the fees paid for use of the Facilities during Tenant Scheduled Uses (the "Proceeds Payment").

6.2 If Landlord's maintenance and operation costs of the Facilities due to Tenant Scheduled Uses is more than the fees paid for use of the Facilities during Tenant Scheduled Uses, Landlord shall not remit any payment to Tenant.

6.3 The maintenance and operation costs and the fees paid for use of the Facilities during Tenant Scheduled Uses shall be determined quarterly. The Proceeds Payment shall be due and payable to Tenant no later than sixty (60) days following the end of each a calendar quarter.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their authorized representatives on the date first written above.

BASTYR UNIVERSITY

CITY OF KENMORE

By: _____
Its: _____

By: _____
Its: City Manager

Approved as to form:

Rod P. Kaseguma, City Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and acknowledged it as the _____ of BASTYR UNIVERSITY to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that ROBERT G. KARLINSEY is the person who appeared before me, and said person acknowledged that he signed this instrument, and acknowledged it as the City Manager of the CITY OF KENMORE to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: _____

Attachment 3



Contract No. 09-C824
Kenmore Original

**CITY OF KENMORE LEASE AGREEMENT
BASTYR UNIVERSITY ACTIVE RECREATION FACILITIES**

THIS LEASE AGREEMENT (this "Lease") is entered into by and between **BASTYR UNIVERSITY**, a Washington non-profit corporation ("Landlord") and the **CITY OF KENMORE, WASHINGTON**, a municipal corporation ("Tenant").

1. **PURPOSE:** The parties recognize the mutual benefits which may be derived from a joint and cooperative use of those certain athletic fields and track located on the Bastyr University Campus, 14500 Kenmore Drive N.E., Kenmore, Washington, as more fully described in **Exhibit "A"** and depicted in **Exhibit "B,"** both of which are attached hereto (the "Facilities"). Accordingly, the purpose of this Lease is to allow Tenant access to and use of such Facilities for the uses and purposes permitted in this Lease.

2. **TERM:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Facilities, subject to the terms and conditions set forth in this Lease. This Lease shall commence as of January 1, 2010 (the "Commencement Date") and, unless earlier terminated in accordance with the provisions set forth in Sections 7 and 13 below, shall continue for a period of eleven (11) years thereafter and terminate on December 31, 2020 (the "Term").

2.1 If Tenant desires to extend the Term for a period of five (5) years, it shall give Landlord written notice on or before September 1, 2019 of its request to extend the Term (the "Extension Request"). Landlord shall have a period of thirty (30) days following its receipt of the Extension Request in which to determine whether Landlord agrees to grant such extension. Landlord's determination to grant such extension shall be in Landlord's sole and absolute discretion and shall be given in writing. In the event Landlord fails to respond to the Extension Request within such 30-day period, then the Extension Request shall be deemed to be denied. If Landlord agrees to grant the Extension Request, then such extension of this Lease shall be on the same terms, covenants and conditions as provided for in this Lease with the exception of Rent, which Rent amount shall be determined pursuant to Section 2.2 below, provided, however, the annual Rent amount during the extended Term shall not be less than the annual Rent amount payable during calendar year 2020.

2.2 If Landlord grants the Extension Request, Landlord shall provide Tenant with Landlord's determination of the fair market Rent for the extended Term, including periodic increases as dictated by the current market, in Landlord's written approval of the Extension Request ("Landlord's Determination of Rent for Extended Term"). Tenant shall provide notice to Landlord within thirty (30) days after receipt of such notice from Landlord as to whether Tenant accepts Landlord's Determination of Rent for Extended Term. In the event Tenant does not agree to Landlord's Determination of Rent for Extended Term, Landlord and Tenant shall attempt to agree upon Rent for the Facilities for the extended Term. If the parties are unable to agree upon the Rent for the extended Term by January 1, 2020, then either party

shall have the right to revoke the Extension Request or approval thereof, as applicable, and the Lease shall terminate on the original termination date provided for in Section 2 above.

3. **USE OF FACILITIES:** Tenant and the general public shall have the right to use the Facilities, as presently constructed or as improved in the future, (1) for games and practices involving the field sports of baseball, lacrosse and soccer, (2) for games and practices involving other field sports that have impacts on the Facilities that are similar to the field sports listed above, and (3) for uses that are approved by the Joint Management Committee, as established in Section 9 below (the "Approved Uses"). The uses permitted under this Section 3 shall be permitted seven (7) days a week, twelve (12) months a year, during the hours between dawn and dusk ("Hours of Operation"). Tenant's use of the Facilities shall not conflict with Landlord Scheduled Uses and Tenant's Scheduled Uses, as set forth in Section 4 below. Landlord agrees to permit reasonable use of the existing parking and restroom facilities located on the Bastyr University campus during the Hours of Operation in connection with the uses permitted in this Section 3, subject to the rules and regulations adopted by Landlord that are consistent with this Lease.

4. **SCHEDULED USES.** Tenant anticipates that both it and the general public will use the Facilities for special and organized athletic and recreational events, activities, sports leagues, and tournaments that are associated with the Approved Uses and that are scheduled generally or specifically in advance (collectively, "Tenant Scheduled Uses"); provided, that such Tenant Scheduled Uses shall not commence until final completion of the Improvements, defined more fully below. Landlord expressly consents to such Tenant Scheduled Uses and agrees to assume responsibility for scheduling and coordinating such Tenant Scheduled Uses, consistent with this Section 4. Except as expressly provided for in this Section 4, Landlord shall not lease the Facilities or otherwise permit any use of the Facilities during Hours of Operation which would interfere with Tenant's or the public's use of the Facilities for the purposes described in this Lease. The Tenant Scheduled Uses for the Facilities shall be during the hours of 3:00 p.m. to 8:00 p.m., Monday through Friday, 9:00 a.m. to 8:00 p.m. on Saturday, and 12:00 noon to 6:00 p.m. on Sunday, subject to the dawn to dusk restrictions of the Hours of Operation (i.e., Landlord has no obligation to provide lighting for the Facilities, and the Facilities shall not be available for Tenant Scheduled Uses after dusk).

Landlord anticipates that it will from time to time use the Facilities for its own university-sponsored events ("Landlord Scheduled Uses"), and Tenant expressly consents to such Landlord Scheduled Uses that are consistent with the scheduling system adopted by Landlord pursuant to this Section 4; provided, that Landlord shall not schedule so many events during Landlord Scheduled Uses as to unreasonably interfere with the intent and purposes of this Lease and Tenant's rights hereunder.

Landlord shall adopt a scheduling system for Landlord Scheduled Uses and Tenant Scheduled Uses, both of which shall be reasonably satisfactory to Tenant. Landlord's scheduling system shall include a procedure by which Kenmore residents and Kenmore-based organizations (defined as those entities and organizations located and doing business within the

jurisdictional boundaries of the City of Kenmore) are given the opportunity to “pre-schedule” the Facilities at least two weeks before scheduling is opened up to other individuals and organizations. Landlord shall have no authority to “bump” any Tenant Scheduled Uses which are properly scheduled and reserved in accordance with Landlord’s scheduling system.

On or before October 1, Landlord shall prepare and present to Tenant an annual fee schedule for Tenant Scheduled Uses of the Facilities for the following year. The fees charged by Landlord shall be comparable to those charged for similar public facilities located within the Seattle/Lake Forest Park/Kenmore/Bothell area, with the understanding that the fee shall be higher for Tenant Scheduled Uses by non-Kenmore residents or non-Kenmore-based organizations. On or before December 1, Tenant shall approve fees for Kenmore residents and Kenmore-based organizations. If Tenant fails to approve such fees by the deadline, the fees proposed by Landlord shall be applicable for the following year. The parties agree to work together in good faith to resolve any concerns that Tenant may have with respect to any proposed fee schedule. Landlord shall be solely responsible for collecting and reporting all fees collected.

Landlord shall use reasonable efforts to advertise the Facilities in the Seattle/Lake Forest Park/Kenmore/Bothell area; provided, that Tenant shall assist Landlord in this endeavor by (i) including information about the Facilities in Tenant’s Newsletters; (ii) including information about the Facilities in its Annual Report; and (iii) posting information and scheduling opportunities for the Facilities on Tenant’s Webpage, all as Tenant deems appropriate. Tenant hereby acknowledges and agrees that Landlord has not made any representations or warranties as to the potential fee revenue that may be generated in connection with the Tenant Scheduled Uses, and Landlord shall have no obligation to attempt to maximize such fee revenue.

5. **RENT:** Tenant shall pay to Landlord at the notice address set forth in Section 17.2, or to such other party or at such place as Landlord may hereafter designate, the following amounts as “Rent” for the Facilities:

5.1 As base Rent for the calendar year 2010, Tenant shall pay to Landlord Rent in the amount of \$35,000.00 within ten (10) days following mutual execution of the Lease.

5.2 As additional Rent in consideration of Landlord’s agreement to construct the Improvements (as defined below), Tenant shall pay:

5.2.1 \$150,000.00 in Rent upon the City of Kenmore’s permitting approval for construction of the Improvements. Landlord acknowledges and agrees that Tenant has made no promises or guarantees regarding such permitting approval, and that Tenant’s application shall be processed in accordance with Tenant’s standard policies and procedures.

5.2.2 \$135,000.00 in Rent upon completion of the Improvements.

5.3 Commencing in the year 2011 and on an annual basis thereafter, Tenant shall pay Rent in the amount of \$50,000.00 per year, which Rent shall be due and owing on January 1 of each year.

In the event the Improvements are not approved and/or constructed, Tenant shall have no obligation to pay the additional Rent amounts set forth in Section 5.2, but, if Tenant elects not to terminate this Lease as provided in Section 13, then the Rent amounts set forth in Sections 5.1 and 5.3 shall continue to be paid during the Term.

This Lease constitutes a "gross lease." The Rent payments set forth herein include all maintenance and operation costs for the Facilities, and are also intended to fully compensate Landlord for any and all services to be provided by Landlord pursuant to this Lease. Landlord shall not charge Tenant any additional services performed by Landlord hereunder.

6. **SCHEDULED USES PROCEEDS.** Landlord shall keep an accounting of all fees collected by it in connection with the Tenant Scheduled Uses. For calendar years 2011 through 2020, inclusive, Landlord shall remit on a quarterly basis to Tenant payment (the "Proceeds Payment") in an amount equal to fifty percent (50%) of all fees paid for use of the Facilities during Tenant Scheduled Uses. The Proceeds Payment shall be due and payable to Tenant no later than sixty (60) days following the end of each calendar quarter.

7. **FACILITIES IMPROVEMENTS.** Landlord has represented to Tenant that it intends to improve the Facilities as depicted in **Exhibit "B"** and described in **Exhibit "C,"** attached hereto, and in accordance with those general plans which Landlord has provided to Tenant (the "Improvements"), and such representations constitute a material inducement to Tenant's execution of this Lease. Subject to the approval and permitting of the Improvements by the City of Kenmore, Landlord covenants and represents that it shall diligently pursue such Improvements to completion. Barring any unforeseen act of God, work stoppage, delay in the permitting and approval process, and depending upon weather conditions during construction of the Improvements as well as the seeding and mature growth of the grass on the playing areas, Landlord estimates that, if the Improvements have been approved and permitted by the City of Kenmore by June 1, 2010, then such Improvements shall be substantially completed by September 1, 2010 and that the Facilities will be available for Scheduled Uses commencing on or about April 15, 2011. If the Improvements are not completed by December 31, 2010 (the "Outside Completion Date"), Tenant may immediately terminate this Lease by written notice to Landlord, any portion of the Rent paid by Tenant pursuant to Section 5.2 shall be returned to Tenant, and the cure period set forth in Section 13 shall not apply; provided, however, that, if the City of Kenmore has not denied approval of the Improvements prior to June 1, 2010, then the Outside Completion Date shall be extended on a day-for-day basis for each day of delay beyond June 1, 2010 that the approvals and permits for the Improvements have not been issued by the City of Kenmore. As an alternative to such termination, Tenant may notify Landlord in writing that it nonetheless wishes to continue the Lease, in which case Tenant shall only be obligated to pay the Rent amounts set forth in Sections 5.1 and 5.3 and Landlord shall refund to Tenant any Rent paid under Section 5.2, or at Tenant's option, Tenant may apply

such Rent paid under Section 5.2 to Rent owing under Section 5.3; provided, that if the Improvements are subsequently approved and permitted at any time during the first five (5) years of the Lease, then Tenant shall at such time be obligated to pay the Rent amounts set forth in Section 5.2; provided, further, that Landlord shall have no obligation to pursue the approval and permitting of the Improvements if the City of Kenmore has previously denied such approval. Tenant's general use of the Facilities shall not interfere with or otherwise impede construction of the Improvements. Landlord shall have the right to exclude Tenant and the public from any area of the Facilities which is under construction or otherwise deemed to be a potential safety hazard during construction.

All Improvements shall be at Landlord's sole cost and expense and in Landlord's sole discretion, consistent with this Section 7.

8. **MAINTENANCE/OPERATIONS.** Landlord shall be solely responsible for any and all maintenance of the Facilities, including the to-be-constructed Improvements. Landlord shall further be solely responsible for operating the Facilities, subject to Tenant's rights pursuant to this Lease. The Rent set forth above is intended to fully and finally compensate Landlord for all maintenance and operational costs, foreseen or unforeseen, which may be incurred by Landlord during the term of this Lease.

9. **JOINT MANAGEMENT COMMITTEE.** Landlord and Tenant shall each designate up to three appropriate staff representatives to serve on a "joint management committee," which shall approve use of the Facilities as set forth in Section 3 above, and shall review use of the Facilities, related maintenance needs, costs and revenues, scheduling questions and any other matters which may arise concerning the Facilities from time to time. The members of the joint management committee shall meet in March and September of each year, and shall cooperate in good faith in discussing and recommending resolutions to any issues which may arise under this Lease.

10. **INDEMNITY.** Tenant shall hold harmless and indemnify Landlord, its officers, employees, successors and assigns against any and all damages and/or losses arising out of Tenant's use of the Facilities including those arising as a result of the Tenant Scheduled Uses or other Tenant sponsored events or activities; provided, that Tenant's indemnification obligations herein shall not extend to any damage or liability caused by or attributable to Landlord's gross negligence or intentional misconduct.

Landlord shall hold harmless and indemnify Tenant, its officers, employees, successors and assigns against any and all damages and/or losses arising out of Landlord's use of the Facilities, including those arising as a result of the Landlord Scheduled Uses or other Landlord sponsored events or activities; provided, that Landlord's indemnification obligations herein shall not extend to any damage or liability caused by or attributable to Tenant's gross negligence or intentional misconduct.

The provisions of this Section 10 shall survive expiration or termination of this Lease.

11. **INSURANCE.** Both Landlord and Tenant shall each secure and maintain at all times during the Lease term, as such term may be extended, appropriate insurance coverage for their respective uses and activities.

12. **HAZARDOUS MATERIALS.** Landlord represents and warrants to Tenant that, to the best of Landlord's knowledge, the Facilities are currently in compliance with all laws and that no Hazardous Materials are present in, under, on or upon the Facilities. Landlord shall indemnify and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses stemming, resulting or arising from the presence of Hazardous Materials on the Facilities; provided, that Landlord's indemnification obligations herein shall not extend to any damage or liability caused by or attributable to Tenant's negligence or intentional misconduct. These indemnifications include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Facilities, or in soil or ground water on or under the Facilities.

As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government due to its potential harm to the health, safety or welfare of humans or the environment. The provisions of this Section 12 shall survive expiration or termination of this Lease.

13. **TERMINATION.** This Lease shall terminate at the end of the Term, unless such Term is either (a) extended by the mutual agreement of the parties, or (b) terminated early pursuant to Sections 7 or 13 of this Lease or upon written consent of both Tenant and Landlord, as applicable.

Landlord shall have the right to terminate this Lease upon Tenant's material breach, including but not limited to Tenant's failure to pay Rent; provided, that Landlord shall first give Tenant written notice of the breach and an opportunity to cure. If Tenant fails to cure the breach within thirty (30) days following Tenant's receipt of Landlord's written notice, Landlord may thereafter immediately terminate this Lease upon written notice to Tenant; provided, that if such breach cannot be reasonably cured within said 30 day period, and Tenant commences to cure such breach within the cure period and thereafter diligently pursues such cure to completion, Landlord shall not terminate this Lease.

Tenant shall have the right to terminate this Lease upon Landlord's material breach, including Landlord's failure to complete the Improvements as set forth in Section 7; provided, that (except for a material breach pursuant to Section 7) Tenant shall first give Landlord written notice of breach and an opportunity to cure. If Landlord fails to cure the breach within thirty (30) days following Landlord's receipt of Tenant's written notice, Tenant may thereafter immediately terminate this Lease upon written notice; provided, that if such breach cannot be reasonably cured within said 30 day period, and Landlord commences to cure

such breach within the cure period and thereafter diligently pursues such cure to completion, Tenant shall not terminate this Lease. If Tenant terminates this Lease due to Landlord's material breach prior to final completion of the Improvements, Tenant shall be entitled to a refund of all Rents paid by it; provided, that if the termination occurs after September 15, 2010, Tenant shall not be entitled to a refund of the Rent paid under Section 5.1. If Tenant terminates this Lease due to Landlord's material breach following final completion of the Improvements, Tenant shall be entitled to a prorated refund of Rent, based upon the amount of Rent payable for the calendar year in which such termination occurs and the number of days elapsed in such calendar year. Tenant's right to any Proceeds Payment collected prior to the termination date shall survive termination of the Lease. For purposes of calculating such proration, the Rents paid pursuant to Section 5.2 shall be deemed to be Rent for the calendar year in which the construction of the Improvements is completed.

14. **ASSIGNMENT.** Tenant shall not sublease or assign its interest in this Lease without Landlord's prior written consent, which consent shall be in Landlord's sole and absolute discretion.

15. **DAMAGE OR DESTRUCTION.** If any portion of the Facilities is partially damaged but not rendered untenantable, by fire or other insured casualty, then Landlord shall diligently restore the Facilities and this Lease shall not terminate; provided, however, that Tenant may terminate this Lease if Landlord is unable to restore the Facilities within six (6) months of the casualty event. The Facilities shall not be deemed untenantable, unless a material portion of the Facilities is damaged or destroyed such that the Facilities cannot be practically or safely used for the Approved Uses. Notwithstanding the foregoing, Landlord shall have no obligation to restore the Facilities if insurance proceeds are not available to pay the entire cost of such restoration. If any available insurance proceeds are not sufficient to pay the entire cost of restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty. In such case, Tenant shall be entitled to a proration of any Rent paid by it for the calendar year in which such casualty occurs, based upon the date of the casualty event.

If the Facilities are entirely destroyed, or partially damaged and rendered untenantable, by fire or other casualty, Landlord may, at its option: (i) terminate this Lease or (ii) restore the Facilities to its previous condition; provided, however, if such casualty event occurs during the last six months of the Term, then either Tenant or Landlord may elect to terminate this Lease. If, within 30 days after receipt by Landlord from Tenant of written notice that Tenant deems the Facilities untenantable, Landlord fails to notify Tenant of its election to restore the Facilities, or if Landlord is unable to restore the Facilities within six (6) months of the date of the casualty event, then Tenant may elect to terminate this Lease.

If Landlord elects to restore the Facilities pursuant to this Section 15, Landlord shall proceed with reasonable diligence to complete the work, and the Rent shall be abated for the period of time that the Facilities are unavailable for the Approved Uses; provided, that there shall be a rent abatement only if the damage or destruction of the Facilities did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or

Tenant's officers, contractors, licensees, subtenants, agents, servants, guests, employees, invitees or visitors. Provided Landlord complies with its obligations under this Section, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Facilities.

16. CONDEMNATION. If any portion of the Facilities is taken in eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the portion of the Facilities and all Rent shall be prorated as of that date. Further, Landlord and Tenant hereby agree that the valuation of the property taken in any such condemnation shall be determined without regard to this Lease (i.e., the property shall be valued as if this Lease does not exist). Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Facilities and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim for relocation benefits only against the condemning authority.

17. MISCELLANEOUS.

17.1 No Waiver. No waiver or delay of demanding any condition or agreement in this Lease by either Landlord or Tenant shall imply or constitute a waiver of either party to demanding compliance with such condition or agreement at any time.

17.2 Notice. All notices required or permitted to be sent under the provisions of this Lease to Landlord and Tenant by one another shall be in writing and (i) personally delivered; (ii) sent by postage prepaid U.S. Mail, certified or registered, return receipt requested, or (iii) sent via nationally recognized overnight courier service to the following addresses:

LANDLORD:
Bastyr University
Attn: Office of the President
14500 Kenmore Drive N.E.
Kenmore, WA 98028

TENANT:
City of Kenmore
Attn: City Manager
7330 NE Bothell Way
P.O. Box 82607
Kenmore, WA 98028

The parties may change such addresses by providing written notice to the other. Notice shall be deemed received on the third business day after mailed, or on the first business day after being sent via courier service.

17.3 Attorneys Fees. If either Landlord or Tenant institute any action or proceeding alleging a breach or violation of this Lease, or any of its terms and conditions; or for the non-payment of rent by Tenant; or for an interpretation of this Lease; the prevailing party in such action or proceeding shall be entitled, in addition to any other relief requested or received, to reasonable attorneys fees and costs as adjudged by a court of competent

jurisdiction, either in that said action or proceeding, or in a separate action or proceeding brought for that purpose.

17.4 Entire Agreement. This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Facilities. No prior or contemporaneous agreements or understandings pertaining to this Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

17.5 Review. The parties hereto represent and warrant that each has read this Lease in its entirety and that the counsel for the respective parties have had the opportunity to review the same.

17.6 Time of the Essence. Time is of the essence in each and every provision of this Lease.

17.7 Governing Law/Forum. This Agreement, and its terms, condition and performance, shall be subject to and construed under the Laws of the State of Washington. Venue for any dispute arising hereunder shall be King County, Washington.

17.8 Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease on the date noted.

LANDLORD:

Bastyr University, a Washington non-profit corporation

By: 
Its: President
Dated: 12/16/09

TENANT:

City of Kenmore, Washington a municipal corporation

By: 
Its: City Manager
Dated: December 15, 2009

STATE OF WASHINGTON)
) ss
 COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, and acknowledged it as the _____ of Bastyr University to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: _____

STATE OF WASHINGTON)
) ss
 COUNTY OF King)

I certify that I know or have satisfactory evidence that Frederick Stauder is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the City manager of City of Kenmore, Washington to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.



DATED: 12/15/09

Lynn Batchelor

NAME: Lynn Batchelor

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: 3/13/13

Exhibit A

The athletic fields are a portion of the Bastyr campus of approximately 4.5 acres in size, as depicted in Exhibit B following; the entire campus property being legally described as follows:

That portion of the N.E. ¼ of Sec. 23 and the N.W. ¼ of Sec. 24, all in Twp. 26N, R 4E., W.M., King County, Washington, described as follows:

Beginning at the N.W. corner of said Sec. 24, thence S89°24'05"E along the N. line thereof a distance of 933.83 ft. to the southwesterly margin of Juanita Drive N.E. (Kenmore-Juanita Road No. 2602); thence S29°19'28"E along said southwesterly margin a dist. of 76.37' to a point designated as point "A" for the purposes of this description; thence continuing S29°19'28"E along said southwesterly margin a dist. of 100.38 ft. to the True Point of Beginning of the herein described tract; thence continuing S29°19'28"E along said southwesterly margin a dist. of 285.35 ft. to a point of curve; thence southeasterly continuing along said southwesterly margin along the arc of a curve to the right said curve having a radius of 925.37 ft. through a central angle of 18°00'00" a distance of 290.71 ft.; thence S11°19'28"E continuing along said southwesterly margin a distance of 55.60 ft.; thence S78°40'32"W a distance of 524.10 ft.; thence S21°28'40"E a distance of 98.71 ft.; thence S19°27'10"W a distance of 898.00 ft.; thence S56°20'10"W a distance of 61.00 ft, thence N31°16'50"W a distance of 101.00 ft.; thence N53°36'40"W a distance of 350.00 ft.; thence S85°22'30"W a distance of 62.00 ft.; thence S16°50'30"W a distance of 139.00 ft.; thence S79°47'00"W a distance of 208.00 ft.; thence S23°20'20"W a distance of 234.00 ft.; thence W. a distance of 130.00 ft.; thence N46°52'20"W a distance of 103.00 ft.; thence N22°36'00"W a distance of 265.00 ft.; thence N5°14'40"W a distance of 382.00 ft.; thence N6°23'40"E a distance of 470.00 ft.; thence N34°18'40"E a distance of 467.32 ft.; thence S55°41'20"E a distance of 130.00 ft.; thence N34°18'40"E a distance of 360.00 ft. to a point of curve, thence northerly and easterly along the arc of a curve to the right said curve having a radius of 90.00 ft. through a central angle of 69°41'20" a distance of 109.47 ft.; thence S76°00'00" a distance of 492.15 ft. to a point of curve; thence easterly along the arc of a curve to the left said curve having a radius of 580.00 ft. through a central angle of 38°21'30" a distance of 388.30 ft.; thence N65°38'30"E a distance of 149.32 ft. to the True Point of Beginning. (Tract contains 50.00 acres.)

The parties agree that upon the completion of a survey of the actual location of the fields, such a legal description may be substituted for this Exhibit.

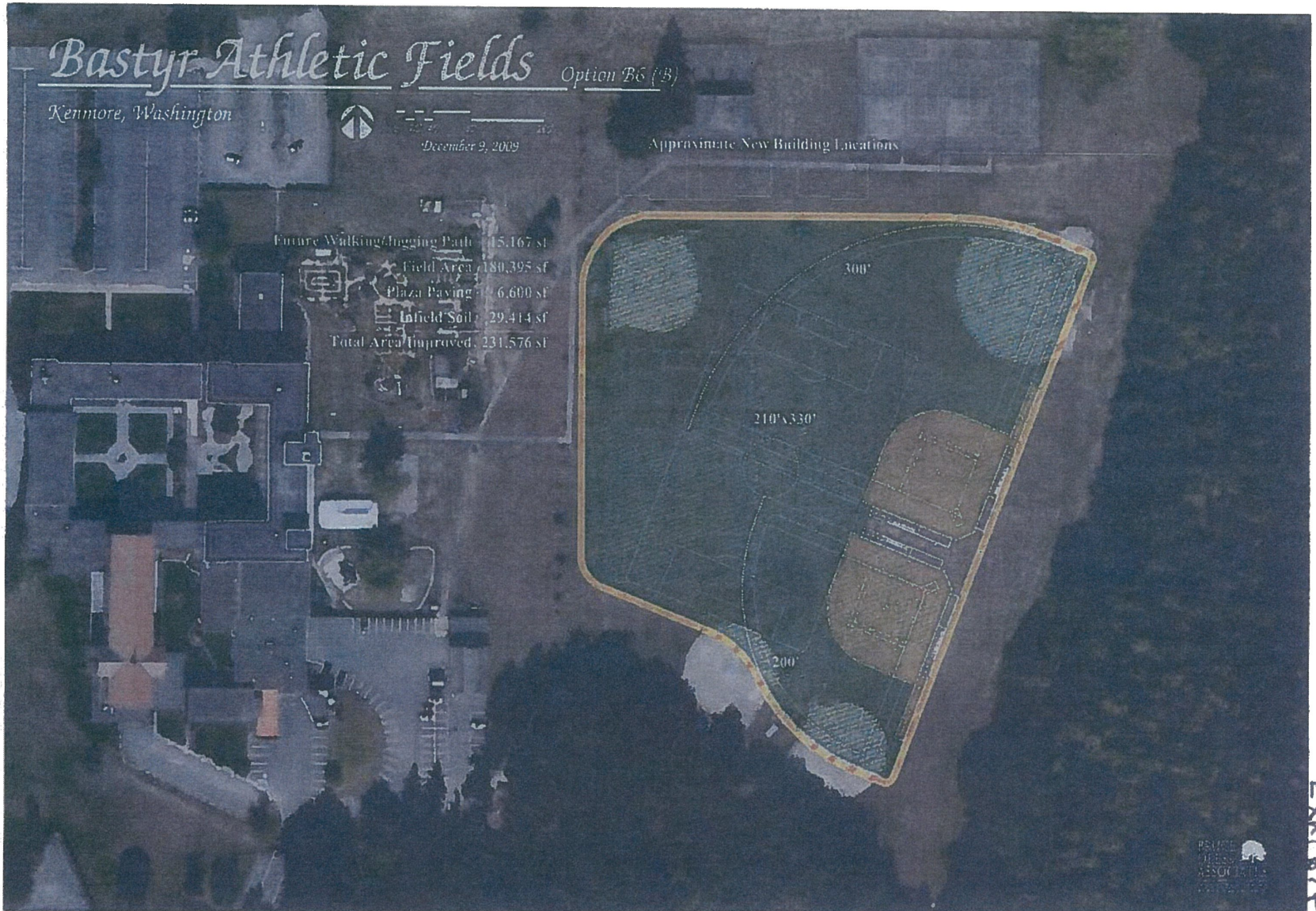


EXHIBIT B

Exhibit C
Description of Improvements

Subject to the terms and conditions set forth in Section 7 of the Lease, Landlord intends to improve the property described in Exhibit A of the Lease with two (2) youth baseball fields (the first field to have a 200 foot grass outfield and skinned infield and the second field to have a 300 foot grass outfield and skinned infield) and with one grass soccer field that is 330 feet by 215 feet, all consistent with the depiction of such fields in Exhibit B of the Lease.

Subject to the requirements of the permits and approvals obtained for the construction of the baseball, lacrosse and soccer fields, Landlord intends to: regrade the field area for a consistent even grade; prepare skinned infields using import infield soil; install automatic irrigation of the fields using an on-site non-potable water source; plant seed to turf type rye grass/bluegrass blend; and relocate two existing hooded backstops.



City Council Business Agenda Item City of Kenmore, WA

Subject/Topic: Resolution 15-262 authorizing the City Manager to submit a grant funding application to the Recreation and Conservation Office Youth Athletic Facilities Program. Proposed Council Action/Motion: Motion to approve resolution 15-262	For Council Meeting Agenda of: June 29, 2015 Department: Community Development Prepared by: Debbie Bent, Director Marc Connelly, Parks Project Manager Approved by Department Head: <u>DA 6/24/15</u> Approved by City Attorney: Approved by Finance Director: <u>June 29/15</u> Approved by City Manager: <u>[Signature]</u> Exhibits/Attachments: 1. Resolution 15-262
Expenditure Required None to approve resolution. Amount Budgeted \$ Appropriation Required N/A	
INFORMATION/BACKGROUND: Staff recommends Council approve Resolution 15-262 authorizing the City Manager to submit an application for grant funding assistance in the amount of \$151,800 for the Moorlands Park ballfield renovation project to the Washington State Recreation and Conservation Office (RCO) Washington Youth Athletic Field Program in accordance with the adopted 2006 Master Plan for Moorlands Park. The grant application deadline is July 1, 2015. Submittal of an approved resolution is an eligibility requirement for the grant submittal. In August of 2014 the City submitted a letter of intent to apply for this funding program. Only jurisdictions that submitted a letter of intent became eligible to apply for this funding program. In November of 2013 the City adopted its Parks, Recreation and Open Space (PROS) Plan, enabling the city to be eligible to apply for grants through the RCO. If the grant application is successful staff would anticipate summer 2016 construction. The funding category is a highly competitive grant program and the majority of applications do not make the funding cut. Funding for the program is part of the State's Capital budget and varies from year to year. The legislature has not adopted its Capital Budget for the coming year, consequently there is no guarantee that funding will be available, nevertheless should the program become funded the City will be positioned to compete.	
FISCAL CONSIDERATION: The RCO funding category requires a 50 percent match (\$151,800). Successful grants are awarded funding on a reimbursement basis, which needs to be considered from a cash flow basis. The City's adopted Capital Improvement Program allocates a \$1,424,000 project budget for completing all park improvements (including the ballfield renovation) at Moorlands Park consistent with the adopted master plan. The project budget assumed a \$500,000 RCO grant allocation in 2018. If the City receives the grant, then an amendment to the CIP budget would be needed to reallocate project funds from 2017-2018 to 2015-2016.	
COUNCIL GOAL/BUDGET OBJECTIVE BEING ADDRESSED: Goal 11 – Implement a parks improvement and financial plan. Adopted PROS Plan Key Values, Major Issues, Opportunities, Goals/Objectives and Policy Support: <u>Key Values</u> 2. Balance-providing a diversity of facilities for both passive and active recreation. <u>Major Issues</u> 2. Desire for local park and recreation services. 4. Improving and diversifying park experiences. <u>Opportunities</u> 4. Continuing partnerships 5. Providing and developing more land for active recreation activities. <u>Goal P-4</u> Objective P-4.1 Policy P-4.1.1.5 "...complete development of Moorlands Park." <u>Goal P-5</u> Objective P-5.1 Policy P-5.1.3 " providing...facility upgrades to existing park lands to support new or existing recreation opportunities where appropriate.	

Attachment 1

**CITY OF KENMORE
WASHINGTON
RESOLUTION NO. 15-262**

**A RESOLUTION OF THE CITY OF KENMORE,
WASHINGTON, AUTHORIZING SUBMITTING
APPLICATION FOR GRANT FUNDING
ASSISTANCE FOR THE MOORLANDS PARK
ATHLETIC FIELD RENOVATION FOR YOUTH
ATHLETIC FACILITIES PROJECT TO THE
RECREATION AND CONSERVATION OFFICE AS
PROVIDED IN WAC 286 AND SUBSEQUENT
LEISLATIVE ACTION**

WHEREAS, under the provisions of the Youth Athletic Facilities (YAF) program, state grant assistance is requested to aid in financing the cost of *facility development* and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

1. The City Manager is authorized to make formal application to the Recreation and Conservation Office for grant assistance;
2. Any grant assistance received will be used for direct costs associated with implementation of the project referenced above;
3. Our organization expects that our matching share of project funding will be derived from Capital Improvement Funds and that pursuant to WAC 286-13-040 (3) we must certify the available match at least one month before funding approval. In addition, our organization is responsible for supporting all non-cash commitments to this project should they not materialize.
4. We acknowledge that the grant assistance, if approved, will be paid on a reimbursement basis, meaning we will only request payment from the Recreation and Conservation Office after eligible and allowable costs have been incurred and payment remitted to our vendors, and that the Recreation and Conservation Office will hold retainage until the project is deemed complete.
5. We acknowledge that any facility developed through grant assistance from the Recreation and Conservation Funding Board must be reasonably maintained and made available to the general public at reasonable hours and times of the year according to the type of area or facility unless other restrictions have been agreed to by the Recreation and Conservation Office Director or the Recreation and Conservation Funding Board.

6. We acknowledge that any facility developed with grant assistance from the Recreation and Conservation Funding Board must be dedicated for public outdoor recreation purposes, and be retained and maintained for at least 20 years from the date of final project reimbursement unless otherwise provided and agreed to by our organization, the Recreation and Conservation Funding Board.

7. This resolution becomes part of a formal application to the Recreation and Conservation Office for grant assistance; and

8. We provided appropriate opportunity for public comment on this application.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 29th DAY OF JUNE, 2015.

CITY OF KENMORE

Mayor David Baker

ATTEST/AUTHENTICATED:

Patty Safrin, City Clerk

Approved as to form:

Rod Kaseguma, City Attorney